THE HON'BLE MR JUSTICE GODA RAGHURAM

–

WRIT PETITION NO : 24285 of 2002

DATED: 09-11-2005

Between:

K.Venkaiah .. Petitioner

And

The Managing Director APSFC and others .. Respondents

THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 24285 of 2002

ORAL ORDER:

The writ petitioner seeks a declaration that he is entitled for promotion to the cadre of Manager from the feeder category of Deputy Managers to which he currently belongs in accordance with the regulations in force on the date of occurrence of the vacancy and with effect from the date on which his immediate juniors including the respondents 3 and 4 were promoted to the post of Manager, with all consequential and incidental benefits.

2. The petitioner was initially appointed as a Junior Officer in the respondent

Corporation with effect from 29.10.1980. He claims to have acquired the qualification of M.Com., during the year 1982 and LLB during the year 1985. He was promoted as Assistant Manager vide proceedings dated 21.01.1987 with effect from 19.12.1986 and is working as such since then as an Assistant Manager. He claims to have been re-designated as Deputy Manager. The petitioner's name also figured in the seniority list of employees of the respondent corporation and in the category of Deputy Managers, in the seniority list as on 31.03.1999, the petitioner figures at S.No.31. The petitioner claims that he is eligible for promotion to the post of Manager in the respondent corporation from the feeder category of Deputy Managers in accordance with the Staff Regulation 20 of the A.P.S.F.C. Regulations. The petitioner claims that promotion to the post of Manager from the feeder category of Deputy Manager is on seniority simplicitor.

3. According to the petitioner, 25 vacancies in the category of Managers had arisen consequent on the promotion of the incumbent managers as Senior Managers, vide Office Order No.75, dated 04.07.2000. Of the said 25 vacancies, 23 were filled up by an office order dated 05.03.2002, in accordance with the regulations that existed prior to the current promotion policy. Two of the vacancies were however not filled up. Had the two vacancies also been filled up, the petitioner, at S.No.31, would have been promoted from the category of Deputy Manager. He is entitled to promotion as a Manager on the basis of his seniority, which is only criteria, is the substantive contention.

4 . According to the revised promotion policy issued by the respondent corporation after due approval by its board, the category of the Manager is to be filled up from the category of Deputy Manager's by considering such of the Deputy Managers who have put in five years of service and who possess specified qualification including M.Com/LLB. The criteria for evaluation of qualified Deputy Managers for promotion as Managers are also specified in the new promotion policy. Accordingly, 50 marks are earmarked for performance, 25 for length of service and 25 for the written test. The evaluation is thus made on the basis of a total 100 marks. The schemata for written test is also specified and the new promotion policy specifies that minimum qualifying marks of 40% of the marks allotted for written test i.e. 10 marks out of 25 marks, should be obtained as a condition precedent for consideration for

promotion.

5. By a contemporaneous office order dated 09.05.2002, in relation to the educational qualifications prescribed in the new promotion policy, it is ordained that even such of the employees not having the prescribed qualifications at present would not be ineligible for being considered for promotion but such promotees must secure the prescribed educational qualifications within the next four years and if due to any exceptional circumstances any employee cannot acquire the qualification by December, 2006 the board may at its discretion grant further extra time on a case to case basis duly taking into account the performance of such candidate requiring the additional time for acquiring the prescribed qualification. This office order also specifies that acquiring the prescribed qualification will be the pre-requisite for considering for promotion on or before 01.01.2007 and thereafter no time would be allowed for fulfilling the qualification cretaria.

6. Sri Y.N.Lohita, learned counsel appearing for the respondents would urge that the office order dated 09.05.2002 being a contemporaneous policy to the revised promotion policy which is come in to effect from 01.05.2005 should be read harmoniously with the substantive revised promotion policy and so read would compel the inference that prior possession of the specified qualification is not a sine qua non for consideration for promotion to the post of a Manager and persons who do not have the specified qualification could also be considered so however that persons promoted without the requisite qualification would have to acquire the qualification within the period of four years from the date of such promotion.

7. Another petitioner's grievance qua respondents 3 and 4 is that despite he being senior to the respondents 3 and 4, was superseded for promotion to the post of Manager.

8. None of the above contentions commend acceptance by this Court. The petitioner has not challenged the revised promotion policy. The revised promotion policy enables consideration of persons who do not have the specified qualifications subject to the condition that the persons so promoted (without the qualifications) would have to acquire the qualifications within a specified time after a promotion.

9. The principal grievance of the petitioner that he should have been considered for promotion on the basis of qualifications as specified in regulations in force on the date of arisal of the vacancy, is projected by reliance on a Judgment of the Supreme Court in **Y.V.RANGAIAH AND OTHERS v J.SREENIVASA RAO AND OTHERS.**

10. The empirical contention of the petitioner is that as the 25 vacancies of Managers had arisen on 04.07.2000 on the promotion of 25 Managers as Senior Managers, the promotion policy as on the date of vacancies ought to have been followed, whenever those vacancies are filed up, and that the revised promotion policy which has come in to force with effect from 01.05.2002 cannot applied by the respondent corporation to such earlier arisen vacancies. This contention ignores the clear specification in the revised promotion policy that the revised promotion policy stipulations will be applicable for filling up of existing and future vacancies (paragraph 01 of the revised promotion policy). In **Y.V.RANGAIAH's** case Supreme Court was considering promotions to the category of Sub-Registrar Grade II. The package of applicable service regulations ordained the preparation of an annual list of approved candidates, which shall be prepared as on the First September of every year. The relevant year that fell for the consideration before the Supreme Court was 1996 and the relevant date was on 01.09.1976. The panel was however not prepared that year and was drawn up only in the year 1977 and for no ostensible reason. Thereafter, there was an amendment to the service rules in G.O.Ms.No.265-Revenue (UI) dated 22nd March, 1977. These rules were applicable to the list of approved candidates to be prepared for the subsequent year i.e. 1977-1978 and not for 1976-77 for which year the panel was not prepared.

11. In the aforesaid circumstances, the petitioners before the A.P. Administrative Tribunal who were the respondents in the Supreme Court had urged that they were entitled to be considered according to the rules applicable and operative on the date the department was mandated to prepare a list of approved candidates i.e. 01-09-1976 and had the rules as on 01.09.1976 been considered, the petitioners would have been eligible to consideration for promotion/appointment to the post of Sub Registrar Grade II. In view of the

amended rules Upper Division Clerks alone became eligible for consideration. The petitioners who were Lower Division Clerks was thus, disentitled for consideration and by application of rules which were not applicable or were in the force as on date the department was obligated to prepare the annual panel. It is in the above factual context that the Supreme Court in **Y.V.RANGAIAH** 's case held as under:

> *"Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos.3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and therefore, thee was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."*

1. It is trite that a conclusion on facts is not a precedent that binds a subsequent Court notwithstanding that such conclusion is by court of superior jurisdiction. What binds the subsequent court as a precedent is the *ratio decidendi.* This is the principle which is applied to the resolution of a factual situation.

13. **Y.V.RANGAIAH** 's case decision of the Supreme Court does not lay down an absolute principle of universal application that regardless of the factual context of specific rules governing appointments or promotions to distinct services, rules as applicable on the date of arisal of a vacancy must apply. Nor does it appear to be an authority for the preposition that an employer is disabled from framing rules altering the method of selection or promotion and making such altered method applicable to existing vacancies, which may have

arisen prior to the making of such rules. Even if such a principles were to be urged, it is necessary that the petitioner should challenge the revised promotion policy which specifically ordains that the revised promotion policy shall come in to force with effect from 01.05.002 and shall be applicable for filling up " **existing and future vacancies (emphasis applied)".** The petitioner has not chosen to challenge the revised promotion policy.

14. The learned counsel for the petitioner would strenuously contend that the petitioner has been injured by the respondent corporation ignoring his preferential claims for consideration for promotion to the post of Manager on the basis of his admittedly higher seniority rank. This contention is misconceived and requires to be rejected out of hand. Seniority is not always and in every circumstance an exclusive claim for promotion. It all depends on the context of rules. Where the rules ordain that promotions to a post from a feeder post are exclusively on the basis of merit, seniority has no role to play and when an junior is promoted on the basis of a perceived superior merit, as perceive by the duly constituted selection committee, no supercession is involved-vide **R.S.DAS V UNION OF INDIA AND OTHERS.**

15. It also requires to be noticed that on 05.12.2002 this Court had directed the respondents to consider the petitioners representation dated 16.11.002. Pursuant to the direction of this Court, the respondent passed an order dated 17.1.2003 rejecting the petitioners' claim for promotion as a Manager duly recording that he failed to qualifications in the written examination as per the revised promotion policy. This order of the employer was communicated to the petitioner and the petitioner did not choose either to challenge the order of rejection or the revised promotion policy.

16. On the analysis aforesaid, this Court finds no merit in the writ petition.

17. The writ petition is accordingly, dismissed. No costs.

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09-11-2005

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